

123 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PacifiCorp

Project No. 2630-008

ORDER ON REHEARING AND CLARIFICATION

(Issued June 19, 2008)

1. On April 8, 2008, Commission staff issued an order¹ granting a new 30-year license pursuant to Part I of the Federal Power Act (FPA), to PacifiCorp to continue to operate and maintain the Prospect Nos. 1, 2, and 4 Hydroelectric Project No. 2630 (Prospect Project). The project, which does not occupy any federal lands, is located on the Rogue River, Middle Fork Rogue River, and Red Blanket Creek in Jackson County, Oregon.
2. On May 7, 2008, PacifiCorp filed a request for clarification, or in the alternative, rehearing of the order issuing the new license. For the reasons discussed below, we grant in part PacifiCorp's request and modify Ordering Paragraphs (B) and (C) and Articles 201 and 411 of the new license order.

Background

3. The Prospect Project consists of three diversion dams that divert water from the Rogue River, the Middle Fork Rogue River, and Red Blanket Creek, three powerhouses, and a number of canals, flumes, and penstocks. A more detailed description is contained in the April 8 license order.² As pertinent to this rehearing order, the project has a bypass reach on the Rogue River that is created by the project's diversion of flows from the project's North Fork reservoir at the North Fork diversion dam through a canal to the

¹ 123 FERC ¶ 62,021 (2008) (*Order Issuing New License*).

² *Id.* at P 11-17.

project's powerhouses. Powerhouse No. 2 flows enter the Rogue River about 2.5 miles downstream from the North Fork dam and reservoir, and Powerhouse No. 1 flows enter the Rogue River approximately 400 feet downstream of Powerhouse No. 2.

4. Both powerhouses are equipped with pressure relief valves that discharge high pressure water from each powerhouse into the Rogue River during periodic load rejection and shutdown of generating units.³

Discussion

A. Whitewater Boating

5. A 6-mile stretch of the Rogue River in the project area is currently used for whitewater boating. The stretch consists of the project's 2.5-mile-long bypassed reach between the project's North Fork diversion dam and the downstream Powerhouses Nos. 2 and 1, and a 3.5-mile reach downstream from Powerhouse No. 1. Because PacifiCorp currently does not allow public access to its project powerhouse sites, most boaters do not attempt to put in or take out boats at Powerhouse No. 2, but rather continue downstream another 3.5 miles to an established take-out point at Lost Creek Lake.⁴ Some boaters, however, use the area around Powerhouse No. 2 as an informal put in or take out for their boats.

6. As explained in more detail below, Article 303 of the license requires PacifiCorp to implement safety measures to ensure the safety of boaters in the area of Powerhouses Nos. 1 and 2. In addition, in order to facilitate whitewater boating, Article 413 requires PacifiCorp to provide scheduled releases into the bypassed reach for eight days each summer for a three-year test period; and Article 414 requires PacifiCorp, on the days the additional flows are provided, to study the feasibility of allowing boaters permanent access (for parking, and boat put in and take out) to the river at Powerhouse No. 2.

1. Public Safety (Article 303)

7. To ensure that boaters using the Rogue River in the area of the project's two powerhouses are protected from any releases from the powerhouses' discharge valves,

³ Use of release valves during load rejection and shutdown events reduce buildup of water pressures that might otherwise cause the structural failure of penstocks and other project works.

⁴ See Commission staff's final environmental assessment for PacifiCorp's project issued on September 28, 2006, at notation "a" beneath Table 10 at p. 89.

Article 303 of the license requires PacifiCorp, within 90 days of license issuance, to evaluate the need to install any signs, lights, sirens, barriers, or other safety measures that may be reasonably necessary or desirable to warn the public of the high pressure releases of water.

8. PacifiCorp requests that Article 303 be revised to give PacifiCorp six months rather than 90 days to prepare and submit the safety evaluation. It asserts that six months are needed because (1) development and submittal of a meaningful analysis of the safety concerns required to be addressed in the report will require more time; and (2) PacifiCorp cannot accurately understand the scope of the concerns to be addressed in the required public safety report until the Commission has, hopefully within six months, acted on PacifiCorp's requests for the deletion of Article 413 (whitewater boating flow release plan) and Article 414 (whitewater boating access plan).

9. PacifiCorp misunderstands the purpose and scope of Article 303. The article's requirement is not premised on PacifiCorp's release of whitewater flows or whether permanent boater access to the Powerhouse No. 2 area is eventually required. Rather, Article 303 is needed to ensure the safety of recreationists that currently boat past the powerhouses.⁵ The summer recreational season in which whitewater boating use at the project is heaviest is about to begin, and PacifiCorp should be able to quickly assess the adequacy of its current warning system to determine whether additional safety measures are warranted. We therefore deny PacifiCorp's request.

2. Whitewater Boating Flow Release Plan (Article 413)

10. To facilitate whitewater boating, Article 413 of the license requires PacifiCorp, within six months of license issuance, to file for Commission approval a whitewater boating flow release plan to provide scheduled releases from the North Fork diversion dam (between 85 and 500 cubic feet per second (cfs)) for eight days each summer for three years in order to determine an appropriate permanent schedule and the precise flows to be released.

11. PacifiCorp requests that Article 413 be deleted in the interest of public safety. It notes the pressure release valves at Powerhouses Nos. 1 and 2 and asserts that the valves'

⁵ Any additional measures that would be required to ensure the safety of those who would use the Powerhouse No. 2 area for put in or take out during the study period to be provided under Article 414 would be addressed in the plan required by that article.

high pressure discharges from each powerhouse into the Rogue River during periodic load rejection and shutdown of generating units make any whitewater boating in the area unsafe.⁶

12. PacifiCorp raises no concerns or arguments regarding hazards to whitewater boaters in the area of Powerhouses Nos. 1 and 2 that were not considered in issuing PacifiCorp's new license. As noted above, whitewater boating is already an established use in the bypassed reach. Currently, boaters in the vicinity of the powerhouses are alerted by the project's sirens to any unexpected discharges from the pressure release valves. As explained in the *Order Issuing New License*,⁷ Commission staff reviewed the project's operation reports and found no reported safety incidents associated with valve releases. Furthermore, Article 303 requires that PacifiCorp review its current safety plan to determine whether additional measures are warranted. For these reasons, we affirm PacifiCorp's obligation to conduct the three-year whitewater boating flow release study required by Article 413.

3. Whitewater Boating Access Study Plan (Article 414)

13. Article 414 of the license requires PacifiCorp, within six months of license issuance, to file for Commission approval, a whitewater boating access study plan to determine the feasibility of providing whitewater boating access to the Rogue River near Powerhouse No. 2. To conduct the study, PacifiCorp must allow public access to the Rogue River near Powerhouse No. 2 during the times that PacifiCorp provides whitewater releases under Article 413.

14. PacifiCorp asks that the Commission delete Article 414 to eliminate any requirement that PacifiCorp provide public access to the Rogue River for whitewater boating use at or near Powerhouse No. 2. Reiterating arguments contained in comments filed by it on December 15, 2006, prior to issuance of the new license, PacifiCorp reasserts that neither the access road leading to Powerhouse No. 2 nor the powerhouse's parking area are adequate for supporting both public and project operations access, and allowing public access to powerhouse areas would compromise project security.

⁶ It argues that although valves of a different design could reduce the force of the water discharges, such new valves would (1) cost approximately 4 million dollars to install, (2) fail to fully eliminate dangerous discharges, and (3) cause vibrations that could damage generating equipment. The license order does not, however, require PacifiCorp to install new valves.

⁷ See 123 FERC ¶ 62,021 at P 74.

15. Article 414 will not be deleted. PacifiCorp has raised no arguments or provided any evidence that have not already been considered in this matter. The license order examined recommendations in favor of allowing public access as well as PacifiCorp's above-described concerns and arguments against allowing public access. The Director reasonably concluded that public safety concerns could be addressed through Article 414 by (1) limiting boaters' access to the Rogue River near Powerhouse No. 2 to the eight days PacifiCorp makes the whitewater flow releases required by Article 413, and (2) monitoring for any conflicts between project-related and recreational uses including boating.

16. Under Article 414, the conditions and hazards cited by PacifiCorp, as well as any actual public or project safety incidents that may occur during the monitoring period, would be documented and assessed. After the three-year test period, PacifiCorp would file, for Commission approval, its final report and recommendations as to whether or to what extent PacifiCorp should provide access to the Rogue River at Powerhouse No. 2 for whitewater boating put in or take out.

B. Small Animal Crossing Plan (Article 410)

17. Article 410 of the license requires PacifiCorp to prepare and file for Commission approval a small animal crossing plan to enhance the ability of small animals to cross the project canals. The article requires that the plan provide for "constructing a sufficient number of 2-foot-wide small animal crossings within the fencing along the project canals to average 14 small animal crossings per mile of canal, to the extent feasible."

18. PacifiCorp requests that the Commission clarify Article 410 in several respects. First, PacifiCorp asks the Commission to clarify that the article does not require 14 *new* small animal crossings per mile of canal, but rather 14 small animal *crossing opportunities* per mile of canal. In other words, the number of crossing opportunities required by the article can consist of new crossings as well as existing project features that allow small animals to cross over or under project works (e.g., large animal crossings, foot or vehicle bridges, or elevated project features).

19. PacifiCorp also asks that we clarify that it is not necessary to establish small animal crossings in areas that are unsuitable for such crossings, such as where there is insufficient habitat on one or both sides of a project canal, and that it is therefore acceptable for the density of small animal crossing opportunities to fall below an average of 14 crossings per mile if there is insufficient suitable habitat to support such a density.

20. We agree with PacifiCorp and clarify Article 410 accordingly. This article does not bar use of either new or existing structures to meet the article's stated goal of an

average of 14 small animal crossings per mile over project canals. In addition, insufficient suitable small animal habitat may in some locations limit PacifiCorp's ability to fully meet the article's target average number of crossings per mile.

C. Erosion and Sediment Control Plan (Article 402)

21. Article 402 of the license requires PacifiCorp, within six months of license issuance, to file for Commission approval, a plan to control erosion and sedimentation that occurs as a result of project operations and maintenance. PacifiCorp asserts that it will need more time to prepare the plan, given the broad scope of project operation and maintenance activities. It therefore requests that the Commission revise Article 402 to extend the deadline for filing the required plan from six months to one year.

22. PacifiCorp's request for modification of Article 402 is denied. Article 402 was developed to prevent adverse water quality conditions associated with land-clearing or land-disturbing activities undertaken by PacifiCorp in the course of routine operation and maintenance activities. The project has been in operation for over 50 years. PacifiCorp should be familiar with the site conditions and any maintenance issues associated with ongoing project operations, so that six months should be adequate to prepare the required plan.

D. Authorized Installed Capacity

23. Article 201 of the license requires PacifiCorp to pay annual charges for the purpose of reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose as indicated in the order issuing new license is 41.56 megawatts (MW), a figure provided by PacifiCorp in its relicense application and used throughout the relicensing proceeding.

24. On rehearing, PacifiCorp asserts for the first time that the 41.56-MW figure is incorrect. According to PacifiCorp, the actual installed capacity of the project is 36.76 MW. A review of the information provided by PacifiCorp indicates that 36.76 MW is the correct installed capacity.⁸ Accordingly, we are modifying Article 201, and also making conforming changes to Ordering Paragraphs (B) and (C) of the license.⁹

⁸ Under section 11.1(i) of the Commission's regulations, 18 C.F.R. § 11.1(i) (2007), the rating of a generator for annual charge purposes is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kilowatts (kW)/kVA. Thus, based on PacifiCorp's clarification in its rehearing request that the two turbine-generator units at Powerhouse No. 2 each have a
(continued...)

E. Minor Corrections

25. Article 411 requires PacifiCorp to file for Commission approval within six months of license issuance an avian protection plan. PacifiCorp notes correctly that Article 411 should be revised to indicate the correct authors and most recent edition (2006) of the publication “Suggested Practices for Raptor Protection on Powerlines” mentioned in the article. Article 411 will be accordingly revised.

26. Ordering Paragraph (B)(2)(f)(v) of the order states that the siphon from the Prospect No. 3 powerhouse goes under the Middle Fork Rogue River. PacifiCorp points out that the siphon goes over, not under, the river. We will modify the ordering paragraph accordingly.¹⁰

continuous-load capacity rating of 20,000 kVA and a system power factor of 0.8 kW/kVA, the authorized installed capacity for each of these turbine-generators is 16,000 kW, for a total authorized installed capacity of 32,000 kW (32 MW) for Powerhouse No. 2. Using this revised number for Powerhouse No. 2, the total authorized installed capacity of the project is 36.76 MW.

⁹ One of the conforming changes is to rescind the order’s approval of PacifiCorp’s Exhibit A. Thus, when PacifiCorp files for Commission approval, the revised Exhibit A required by Article 203, PacifiCorp should include the correction to the project’s overall installed capacity, as well as the continuous-load rating capacities for all of the generators, each generator’s power factor, and the capacity of all turbines at best gate opening. The revised Exhibit A should also include the following clarifications or corrections identified by PacifiCorp in its rehearing request: (1) all of the project’s flumes contain steel tubs, and none of the tubs are wooden; (2) water does not enter the Prospect No. 4 powerhouse through a flowline, but through a short canal; and (3) a buried flowline can be used to divert water around the Prospect No. 4 powerhouse, not via a canal. PacifiCorp’s statement in its rehearing request that, in addition to a project operator being at the site from 8:00 AM to 4:30 PM seven days a week as stated in P 12 of the order, an operator is on call by telephone 24 hours a day, 7 days a week does not require any modifications to the license order.

¹⁰ Our revision of Ordering Paragraph (B)(2) also corrects the original paragraph’s incorrect enumeration of project works.

The Commission orders:

(A) The request for clarification or, in the alternative, rehearing, filed by PacifiCorp on May 7, 2008, is granted to the extent set forth in this order and is denied in all other respects.

(B) The *Order Issuing New License* for Project No. 2630, 123 FERC ¶ 62,021 (2008), is modified as follows:

(1) The first section of Ordering Paragraph (B)(2) is modified by correcting the numbering of the items and revising (f)(v) and (h) to read:

(2) Project works consisting of: (a) a 9-foot-high, 1,160-foot-long concrete and earth-fill diversion dam on Red Blanket Creek; (b) a 10-foot-high, 165-foot-long concrete gravity-type overflow diversion dam on the Middle Fork Rogue River; (c) a 50-foot-high, 384-foot-long concrete gravity diversion dam on the Rogue River (North Fork diversion dam); (d) a 260-acre-foot impoundment at a normal pool elevation of 2,597 feet above mean sea level (North Fork reservoir) behind the North Fork diversion dam; (e) a fishway on the Middle Fork diversion dam; (f) an approximately 9-mile-long water conveyance system composed of: (i) concrete lined canals (32,700 feet), (ii) an unlined earthen canal (4,426 feet), (iii) three elevated open-top steel-tub flumes (1,070 feet), (iv) three steel sag pipes (inverted siphons totaling 4,590 feet), (v) an inverted siphon from the Prospect #3 powerhouse over the Middle Fork Rogue River (vi) a twin steel pipe flowline (3,300 feet), and (vii) steel penstocks (1,796 feet); (g) an elevated 48.5-foot-high, 20-foot-diameter steel surge tank supported by a 77-foot-high steel tower for an overall height of 125.5 feet; (h) three powerhouses located at about river mile 169 of the Rogue River with four turbine generating units for a combined installed capacity of 36.76 MW; (i) three 69-kilovolt (kV) transmission lines (0.26, 0.28, and 0.31 mile in length) and one 2.3-

kV transmission line (0.05 mile in length); (j) a developed recreation area known as North Fork Park; and (k) appurtenant facilities.

(2) The second sentence of Ordering Paragraph (B)(2) is modified to rescind the order's approval of Exhibit A and reads: "The project works generally described above are more specifically shown and described by the approved portions of Exhibit F shown below."

(3) The third sentence of Ordering Paragraph (B)(2) is deleted.

(4) The last sentence of Article 201 is revised to read: "The authorized installed capacity for that purpose is 36.76 megawatts."

(5) Subpart (2) of the second paragraph of Article 411 is modified to read:

(2) address the guidelines of Edison Electric Institute, California Energy Commission, and the Avian Power Line Interaction Committee in "Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006;"

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.